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From:

Sent: Tuesday, September 15, 2009 12:29:00 PM

To:

Cc:

Subject: Collection Appeal Rights (CAP rights)

Good afternoon

Thank you for allowing us to assist you in this matter. We have reviewed your inquiry and our response is set forth below.

The taxpayer's property was foreclosed upon and sold at auction on .
 purchased the property at the auction.
 , hired by to perform the title search on the property, failed to
 discover a Notice of Federal Tax Lien that was filed on , in the amount of \$.

The IRS was not notified in advance that the property was to be sold. After the sale of the property, the Notice of Federal Tax Lien was discovered. The total due on the foreclosed mortgage at the time of sale was \$, including the debt and legal fees. At auction, the property was sold to , the highest bidder, for \$. The most recent appraisal of the property reflected an "as-is" market value of \$ and a sales comparison value of \$. , acting as s agent, contacted the IRS and requested a discharge of the lien under section 6325(b)(2)(B) based on the fact that there was no equity in the property at the time of the foreclosure sale. The IRS is about to send a letter denying their request for a discharge of the lien.

The application for a certificate of discharge under section 6325(b)(2)(B) submitted by is submitted by **on behalf of** . is clearly identified as an agent for . In effect, the actual application for a certificate of discharge is submitted by .

The regulations make it clear that a property owner who is not the taxpayer can apply for a certificate of discharge of a lien. Treas. Reg. § 301.6325-1(b)(5) states that: "Any person desiring a certificate of discharge under this paragraph (b) shall submit an application in writing to the appropriate official. The application shall contain the information required by the appropriate IRS publication. For purposes of this paragraph (b), any application for certificate of discharge **made by a property owner who is not the taxpayer**, and any amount submitted pursuant to the application, will be treated as an application for discharge and a deposit under section 6325(b)(4) unless the owner of the property submits a statement, in writing that the application is being submitted under another paragraph of section 6325 and not under section 6325(b)(4), and the owner in writing waives the rights afforded under paragraph (b)(4), including the right to seek judicial review." (Emphasis added.) is a property owner who is not the taxpayer.

Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property From Federal Tax Lien, section 12, states in pertinent part, as follows: **"If you are an owner of property (other than the taxpayer) and you wish to submit an application under section 6325(b)(2), you must waive the rights that would be available if the application were made under section 6325(b)(4)."** (Emphasis in original.) Publication 783, section 9, states further that: "If your application is denied, you have appeal

rights, **Form 9423**, Collection Appeal Request and **Publication 1660**, Collection Appeal Rights, will be issued, along with an explanation of why your application was denied.” As a property owner who is not the taxpayer, _____ has appeal rights if their application for a certificate of discharge is denied.

I.R.M. 8.1.1.4 addresses collection cases under Appeals jurisdiction. I.R.M. 8.1.1.4(5) specifically addresses the Collection Appeal Program. The Collection Appeal Program (CAP) is an administrative appeal for certain collection actions. A taxpayer, or **a third party whose property is subject to a collection action**, may appeal the following actions under CAP:

- d. Denials to issue lien certificates such as subordination, withdrawal, discharge or non-attachment.

(Emphasis added.) See also I.R.M. 8.24.1.2(2)(d).

It is clear from the language in the [regulations](#) and in [Publication 783](#) that the process contemplates that a third party owner who is not the taxpayer is eligible to apply for a certificate of discharge. In the instant case, _____ is a third party owner of the property in question and is not the taxpayer. _____’s property is subject to the Federal Tax Lien. As such, if _____’s application for a certificate of discharge is denied, they are entitled to collection appeal rights.